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(8)

Site Plan Special Permit/Special Permit # 09/15/06-410
Bluebird Realty Trust
2 School Street and 127,129,131 Main Street (Ashton)
Acton Massachusetts 01720

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DECISION of the Board of Selectmen (hereinafter the Board) on the petition of Bluebird Realty Trust (hereinafter the Petitioner) for the property located at 2 School Street and 127,129,131 Main Street, Acton, Massachusetts. Said property is shown on Acton Town Atlas Map H2A Parcels 11 and 40.

This Decision is in response to an application submitted to the Board on September 15, 2006 by the Petitioner for a Site Plan Special Permit and Special Permit under Section 10.3 & 10.4 of the Acton Zoning Bylaw (hereinafter the Bylaw) to raze 127 Main Street, a portion of 129 Main Street and add an addition to 2 School Street. The Petitioner is proposing to convert 2 School Street to a restaurant and function hall.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order on November 13, 2006 at 7:15 PM, in the Memorial Library located at 472 Main Street. A site walk was held on December 11 at 9:00 AM. The hearing was continued until January 8 without comment and then continued until February 12, 2007 at 7:10 PM. in the Memorial Library. Board members Walter Foster, Peter Ashton, F. Dore Hunter, Lauren Rosenzweig and Andrew D. Magee were present throughout the hearings. Walter Foster did not attend the site walk.

The record of the proceedings and submissions upon which this permit is based may be referred to in the Office of the Town Clerk, or the Office of the Board.

Exhibit I

A properly executed application for Site Plan Special Permit approval received September 15, 2006; A letter from Michael Fee of Fee, Rosse & Lanz, P.C. dated 11/9/06; Stormwater Management Report Dated July 2006; Groundwater Recharge Analysis dated 12/21/06; Four traffic reports from Conley Associates one dated June 21, 2006 and three dated December 18, 2006; Two page report on Exchange Hall proposed stone dated 9/10/06; Three reports from Waterman Design Associates Inc. dated 8/23/06, 10/30/06 and 1/11/07; A letter to the Garry Rhodes from Bluebird Realty Trust dated 11/29/06; Certificate of Appropriateness #0626 with addendum; Thirteen-sheet set of engineered plans dated June 22, 2006 revised 8/24/06, 10/30/06, and 1/11/07.

Exhibit II

Interdepartmental Communication (IDC) from the Town Manager to the Town Staff requesting comments. The following IDC's were received:

1. Building Commissioner dated November 8 and January 2, 2007
2. Town Planner dated October 19, 2006 revised November 3, 2007 and February 2, 2007
3. Fire Chief dated October 25, 2006
4. Municipal Properties Director dated September 29, 2006
5. Engineering Department dated October 18, 2006 and February 8, 2007
6. Health Department dated September 26, 2006
7. Transportation Advisory Committee dated September 28, 2006, December 1, 2006 and February 8, 2006
8. Historic District Commission dated October 3, 2006, November 10, 2006

Exhibit I is hereinafter referred to as the Plan:

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1.0 Findings and Conclusions

Based upon its review of the exhibits and records of the proceedings, the Board found and concluded that:

- 1.1 The site is located in South Acton Village Zoning District and Zone 4 of the Groundwater Protection District and the USE is allowed by Special Permit in the South Acton Village Zoning District and by right in Zone 4.
- 1.2 The site is located in the South Acton Historic District. The demolition of 127 Main Street and a portion of 129 Main Street is subject to the Historic District Commission (HDC) approval. The rebuilding of all buildings is subject to the approval of the HDC. The HDC has issued a Certificate of Appropriateness #0626.
- 1.3 The restoration of Exchange Hall and 131 Main Street is of critical concern to the Board. Exchange Hall is in disrepair through neglect. The Board wants to ensure as this project moves forward the restoration of Exchange Hall is a top priority. The Petitioner provided a "Schedule Worksheet" dated 12/18/06. The Board finds the schedule acceptable except all porch rebuilding on Exchange Hall shall be completed prior to the demolition of 127 Main Street.
- 1.3 The Plan provides for a total of 23 parking spaces on site. Two of the parking spaces are reserved for the residential use located at 129 Main Street. Four of the parking spaces are reserved for the office located at 129 Main Street. When the office is closed the four office parking spaces may be counted for the use of Exchange Hall. Four of the parking spaces are used as drop-off after 5 PM and can only be used to satisfy the Bylaw when no restrictions are in place.
- 1.4 Exchange Hall will be used as both a restaurant and function hall. The parking requirements for a restaurant is one space for each three seats. The Bylaw does not have a parking requirement for function hall but the Board finds it most closely represents an auditorium which is one space for each four seats. In both cases the Bylaw s. 6.9.4.4 provides the minimum number of required parking spaces shall be 70% of the requirements in s. 6.3.1. Therefore, the number of seats allowed is as follows:
 - a.) 18 spaces (office open before 5:00 PM.) x 3 (seats/space rest.) / .7 = 77 seats
 - b.) 22 spaces (office closed before 5:00 PM.) x 3 (seats/space rest.) / .7 = 94 seats
 - c.) 18 spaces (office closed after 5:00 PM.) x 3 (seats/ space rest.) / .7 = 77 seats
 - d.) 18 spaces (office closed) x 4 (seats/space function) / .7 = 103 seats
- 1.5 The Bylaw s. 6.9.4.5 allows for "Collective Use of Parking Facilities". The additional parking spaces must be located in the same zoning district and must be based on a written agreement. If the applicant obtains such written agreement, seating shall be allowed to be increased according to the Bylaw.
- 1.6 The Petitioner, at his expense proposes to construct a fence along School Street and Main Street. The location of the fence in the right of way shall be approved by the Town Engineer. The town reserves the right to have the fence removed at the Petitioner's expense. The Petitioner shall remove or relocate the fence within 30 days of written request by the Board. If the Petitioner fails to remove the fence the town shall have the right to remove the fence. Any damage to the fence shall be the responsibility of the Petitioner.

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- 1.7 The site is located in the sewer district. The site has been assessed a total of 4.85 betterment units. The number of betterment units is based on as of right zoning. The proposal is a Special Permit which exceeds the number of betterment units. The Petitioner shall be required to pay the increase in betterment units.
- 1.8 The Plan as herein modified:
- Will protect the neighborhood and the Town against seriously detrimental or offensive USES on the site and against adverse effects on the natural environment.
 - Will provide for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation including emergency vehicles, on or adjoining the site.
 - Will provide an adequate arrangement of parking and loading spaces in relation to the proposed USES of the premises.
 - Will provide adequate methods of disposal of refuse or other wastes resulting from the USES permitted on the site.
 - Is consistent with the Master Plan.
 - Is in harmony with the purpose and intent of this Bylaw.
 - Will not be detrimental or injurious to the neighborhood in which it is to take place.
 - Is appropriate for the site and complies with all applicable requirements of this Bylaw.

Therefore, the Board voted 5-0 to **GRANT** the requested Special Permit and Site Plan Special Permit subject to and with the benefit of the following Plan modifications, conditions and limitations.

2.0 **Plan Modifications**

Prior to the issuance of a Building Permit or the start of any construction on the site, the Petitioner shall cause the Plan to be revised to show the following additional, corrected or modified information. The Building Commissioner shall not permit any construction activity to begin on the site until and unless he finds that the Plan is revised to include the following additional, corrected or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Commissioner. Where approvals are required from persons other than the Building Commissioner, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Commissioner before the Commissioner shall issue any Building Permit or permit any construction on the site. The Petitioner shall submit five copies of the final plans as approved for construction by the Building Commissioner to the Building Commissioner prior to the issuance of a Building Permit.

- 2.1 The location of the fence along School Street and Main Street shall be approved by the Town Engineer.

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3.0 Conditions

- 3.1 The function hall shall not open until 7:00 PM Monday through Friday.
- 3.2 Prior to the issuance of the Building Permit the final betterment units shall be determined. The payment of the increase in betterments shall be according to the Town Bylaw.
- 3.3 The total impact of the need for off site parking cannot be completely assessed until it is determined how successful the facility is. The Board reserves the right to reopen the hearing to seek improvements to traffic circulation.
- 3.4 Development shall proceed according to "Schedule Worksheet" dated 12/18/06 except all remaining porches on Exchange Hall shall be repaired prior to the demolition of 127 Main Street.
- 3.5 The seating is limited as follows except as may be increased by written agreement as provided in the Bylaw s. 6.9.1.5. Any written agreement shall be provided to the Building Commissioner. Any increase in the number of seats shall be subject to the approval of the Board.
 - a.) 18 spaces (office open before 5:00 PM.) x 3 (seats/space rest.) / .7 = 77 seats
 - b.) 22 spaces (office closed before 5:00 PM.) x 3 (seats/space rest.) / .7 = 94 seats
 - c.) 18 spaces (office closed after 5:00 PM.) x 3 (seats/ space rest.) / .7 = 77 seats
 - d.) 18 spaces (office closed) x 4 (seats/space function) / .7 = 103 seats
- 3.6.1 Prior to occupancy or use of any new building constituting a part of the project, an as-built plan shall be supplied by the engineer of record certifying that the project was built according to the approved documents. The as-built plan shall show all pavement, building and drainage structure locations above and below grade in their true relationship to lot lines, and include appropriate grades and elevations. In addition to the engineer of record, said plan shall be certified by a Mass. Registered Land Surveyor.
- 3.7 In order to mitigate any adverse impact of deliveries and trash pick-up the BOARD finds that it is necessary and appropriate to prohibit deliveries and trash pick-up before 6:30 AM or after 10:00 PM

4.0 Limitations

The Authority granted to the Petitioner by this permit is limited as follows:

- 4.1 This permit applies only to the site, which is the subject of this petition. All construction shall be conducted in accordance with the terms of this permit and shall be limited to the improvements shown on the Plan.
- 4.2 There shall be no further development of this site without written consent of the Board of Selectmen as outlined within the Acton Zoning Bylaw.
- 4.3 This Decision applies only to the requested Special Permit. Other permits or approvals required by the Acton Zoning Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.

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- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.5 The hauling of earth to and from the site shall be restricted to the hours between 9:00 AM and 4:00 PM Monday through Saturday.
- 4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the Acton Zoning Bylaw.
- 4.7 This Site Plan Special Permit shall lapse on March 12, 2009 unless work approved by this permit has commenced except for good cause. Any request for extensions shall be made at least thirty (30) days prior to expiration. The Board reserves the right to amend the permit by its own or at the request of the Petitioner with or without a new hearing.

5.0 **Appeals**

Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within 20 days after the filing of this Decision with the Acton Town Clerk.

Witness our hand this day of March, 2007

Walter Foster, Chairman

I, Christine Joyce, hereby certify that this is a true copy of the Decision of the Board of Selectmen.

Christine Joyce, Recording Secretary

Date filed with Town Clerk

Eva K. Taylor, Town Clerk

TO WHOM IT MAY CONCERN: This is to certify that the 20 day appeal period on the Decision of Bluebird Realty Trust has passed and there have been no appeals made to this office.

Date

Eva K. Taylor, Town Clerk

cc: Petitioner
Building Commissioner
Planning Board
Engineering
Conservation
Director of Municipal Properties
Board of Health
Town Clerk
Planning Boards - Concord, Littleton, Westford, Maynard, Carlisle, Boxboro, Stow, Sudbury